

ANG TOON CHEW & SONS (MALAYSIA) SDN BHD.

a

v.

WAKIL-WAKIL DIRI BAGI MOHAMED TAIB YUSOFF, SIMATI

HIGH COURT MALAYA, JOHOR BAHRU

ABDUL MALIK ISHAK J

b

[CIVIL SUIT NO: 22-94 OF 1994]

3 JANUARY 1997

CIVIL PROCEDURE: *Locus standi* - Plaintiffs claiming title to land held under temporary occupation licence - Issue documents of title subsequently issued in name of third party - Documents of title did not contain reference to temporary occupation licence - Whether plaintiffs have locus standi to bring claim

c

LAND LAW: *Indefeasibility of title* - Registration, priority of - Whether person claiming under temporary occupation licence could claim interest in land against registered owner - Effect of registration

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LAND LAW: *Temporary occupation licence* - Rights of licence holder - Whether rights transferable - Whether transfer to third parties valid - Limitations on temporary occupation licence - Contracts Act 1950, s. 24 - National Land Code 1965, s. 68

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The plaintiffs brought action claiming title to certain pieces of land in Johor ('the land'), alleging that Ang Toon Chew ('Ang') (deceased) had purchased the land in 1956 from one Muthupalaniapa Chettiar ('Muthu') under an agreement of sale and irrevocable power of attorney. Muthu had earlier purchased the land in 1951 from one Ramaratnam Naidu ('Rama') also under an agreement of sale and irrevocable power of attorney. The land was held under a temporary occupation licence ('TOL') described as 'surat sementara 32 of 1925'. The plaintiffs also alleged that Ang had assigned the land to the plaintiffs in 1982 in consideration of the plaintiffs paying the quit rent and assessment.

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Title to the land was subsequently registered in the name of one Abdul Rahman bin Taib as the representative of Mohd Taib bin Yusoff ('Taib') (deceased). The plaintiffs in these proceedings sought, *inter alia*, an order that Taib's son, Othman bin Taib, be appointed to represent Taib's estate in the proceedings and that the proceedings be carried on against Othman bin Taib as if he had been substituted for the said estate. The plaintiff's application was dismissed by the Senior Assistant Registrar and the plaintiffs appealed. The issues in this appeal were: (i) whether the plaintiffs had *locus standi*; and (ii) the effect of the TOL on the concept of indefeasibility of title.

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a Held:

- b** [1] The issue documents of title to the land did not carry the legend of the surat sementara 32 of 1925 and consequently were not connected with one another. Moreover the restriction on the TOL that the land could not be transferred or sold without the consent of the Collector of Land Revenue, would bar any transaction in regard to the TOL. As such, the agreements and powers of attorney pertaining to the sale of the land to Ang had nothing to do with the titles subsequently issued to Taib and the plaintiffs lacked the necessary *locus standi*.
- c** [2] A TOL under the law is granted for one year and terminates upon the death of the person to whom it was granted. Under s. 68 of the National Land Code 1965 ('NLC'), a TOL may not generally be transferred or assigned. The surat sementara 32 of 1925 being in the nature of a TOL, its validity was only for a year. Therefore, the purported sale to Muthu
- d** in 1951 was bad in law and of no effect since it was tainted with illegality under s. 24 of the Contracts Act 1950. The subsequent sale to Ang and the assignment to the plaintiff were equally bad in law and of no effect. The payment of quit rent of the land was ineffectual to give the plaintiffs entitlement to the land.
- e** [3] The party in whose favour registration has been effected will obtain an indefeasible title to or an interest in the land. On the facts of this case, the exceptions to s. 340 of the NLC do not apply and neither did the plaintiffs challenge the indefeasibility of Taib's title. Even if the surat sementara 32 of 1925 could be traced to the issue documents of title to
- f** the land, Taib was first in getting his name onto the register and in law, he obtained indefeasible title.

[Appeal dismissed.]

Cases referred to:

- g** *Government of Malaysia v. Lim Kit Siang* [1988] 2 MLJ 12 SC (*refd*)
Karpal Singh v. Sultan of Selangor [1988] 1 MLJ 64 (*refd*)
Boyce v. Paddington Borough Council [1903] 1 Ch. 109 (*refd*)
Gouriet v. Union of Post Office Wrokers [1978] AC 435 (*refd*)
Lim Cho Hock v. Govt of the State of Perak & Ors. [1980] 2 MLJ 148 (*refd*)
Tan Sri Hj Othman Saat v. Mohamed bin Ismail & Ors. [1982] 2 MLJ 177 (*refd*)
- h** *Abdul Razak Ahmad v. Majlis Bandaraya Johor Bahru* [1995] 2 MLJ 287 (*refd*)
Papoo v. Veeriah [1965] 1 MLJ 127 (*refd*)
Paruvathy v. Krishnan [1983] 2 MLJ 121 (*fol*)
Mohamed v. Kunji Mohidin [1967] 1 MLJ 96 FC (*fol*)
Hee Cheng v. Krishnan [1955] MLJ 103 (*fol*)
- i** *Govindaraju v. Krishnan* [1962] MLJ 334 (*fol*)

**Ang Toon Chew & Sons (Malaysia) Sdn. Bhd. v. Wakil-wakil Diri
Bagi Mohamed Taib Yusoff, Simati**

[1997] 2 CLJ

Abdul Malik Ishak J

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Punca Klasik Sdn. Bhd. (No. 2) [1996] 5 MLJ 92 (foll) **a**
Teh Bee v. K Maruthamuthu [1977] 2 MLJ 7 (foll)
Bank Bumiputra (M) Bhd. v. Mahmud bin Hj Mohamed Din (Datin Hajjah Salma bte Md. Jamin, Intervener) [1989] 1 MLJ 381 (foll)
Dato' Hj Nik Mahmud bin Daud v. Bank Islam (M) Bhd. [1996] 4 MLJ 295 (refd)
Krishnadas a/l Achutan Nair v. Maniyam a/l Samykano [1997] 1 MLJ 94 (foll) **b**
Choe Lean How v. Fock Fong Looi [1985] 2 MLJ 440 (foll)

Legislation referred to:

Contracts Act 1950, s. 24

National Land Code 1965, ss. 67, 68, 340(4)(b)

Other sources referred to:

Mozley & Whiteley's Law Dictionary 9th Edn.

For the plaintiffs - Mohd. Najib Omar; M/s. Abdullah A. Rahman & Co.

For the defendants - Fadzilah Haji Omar; M/s. Fadzilah, Zarinah & Co.

JUDGMENT

Abdul Malik Ishak J:

By way of a summons in chambers in Encl. 4, the plaintiffs sought for the following orders:

- (1) that Othman bin Taib be appointed to represent the estate of Mohamed Taib bin Yusoff, deceased, for the purpose of the proceedings in this action. **e**
- (2) that the proceedings in this action be carried on against the said Othman bin Taib as if he had been substituted for the said estate.
- (3) that costs of this application be costs in the cause. **f**

Enclosure 4 was supported by an affidavit of Lee Buck Heng that was affirmed on 6 September 1994 which in a gist showed that the plaintiffs were claiming title to all that pieces of land held under Grant No: 28716 for Lot 142 (hereinafter referred to as 'Grant 28716') in the township of Bandar Pontian Kecil, district of Pontian, Johor wherein shophouses numbers 445 and 447, Jalan Alsagoff, Pontian were erected thereon. The plaintiffs too were claiming title to 2,739/27,045 undivided share of all that pieces of land held under H.S.(D) 1971 for Lot 141 (hereinafter referred to as 'H.S.(D) 1971') in the township of Bandar Pontian Kecil, district of Batu Pahat, Johor with shophouses numbers 441 and 443, Jalan Alsagoff, Pontian erected thereon. By an affidavit in enclosure 11, that was affirmed by Ang Guan Seng on 5 January 1995, it was deposed that Ang Guan Seng's late father by the name of Ang Toon Chew had purchased on 29 March 1956 a portion of land containing an area of 5,760 square feet together with shophouses numbers 441, 443, 445 and 447, **g**
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- a* Jalan Alsagoff, Pontian, Johor which said portion of land was held under surat sementara No: 32 of 1925 situated in the township of Pontian Kecil from one Muthupalaniappa Chettiar son of Sithambaram Chettiar on the strength of an agreement of sale cum irrevocable power of attorney.
- b* Fadzilah bte Haji Omar affirmed an affidavit-in-reply on 31 October 1994 as reflected in Encl. 5 and there she challenged the *locus standi* of the plaintiffs. In another affidavit-in-reply that was affirmed on 24 January 1995 as seen in Encl. 12, Fadzilah bte Haji Omar deposed that Grant 28716 was registered in the name of Abdul Rahman bin Taib “sebagai wakil” while H.S.(D) 1971 was also registered in the name of Abdul Rahman bin Taib “sebagai wakil bagaimana dinyatakan oleh Grant of Letters of Administration.” Again in
- c* Encl. 12, the challenge to the *locus standi* of the plaintiffs was advanced.
- On 24 October 1995, the Senior Assistant Registrar (“SAR”) dismissed Encl. 4 in favour of the defendants. Being aggrieved the plaintiffs filed an
- d* appeal to the Judge in Chambers in Encl. 32. From the affidavits filed and from the evidences garnered from it, only two issues could be discerned. These two issues may compendiously be stated thus:
- (1) the *locus standi* of the plaintiffs to advance this case; and
- e* (2) the temporary occupation licence tied up with the concept of indefeasibility of title.

The First Issue

- f* *Mozley & Whiteley’s Law Dictionary*, Ninth Edition by John B. Saunders Esq defined *locus standi* (a place of standing) as:
- ... a right of appearance in a Court of justice, or before parliament, on any given question. In other words, it signifies a right to be heard, as opposed to a right to succeed on the merits.
- g* It is said that *locus standi* exists where there is an assertion or infringement of a right which affects the plaintiff’s interest substantially or where the plaintiff has a genuine interest in having his legal position adjudicated and declared. The then Supreme Court in *Government of Malaysia v. Lim Kit Siang* [1988] 2 MLJ 12 SC, held the view that the test of “sufficient interest in the matter”
- h* did not apply in the Malaysian context. In *Karpal Singh v. Sultan of Selangor* [1988] 1 MLJ 64, Abdul Hamid CJ (Malaya) (who later rose to be the Lord President) had occasion to say something on *locus standi* where his Lordship elaborated on the concept and the law of *locus standi* in these fine words:
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There are various approaches which a Court may adopt in deciding the question of *locus standi*. One approach is to ask whether the plaintiff has ‘a cause of action.’ Another approach is to determine whether the plaintiff can establish a ‘right’ which the Court may declare. Yet another approach is to require the plaintiff to demonstrate ‘a special injury’ resulting from the subject matter of the declaration. A fourth approach requires the plaintiff to have an ‘interest’ in the subject matter of the declaration to be litigated. A final approach leaves the question of standing to be determined by the Court in the exercise of its discretion.

In *Government of Malaysia v. Lim Kit Siang (supra)*, Salleh Abas LP (as he then was) was of the view that the law on *locus standi* in Malaysia should be based and accepted by the Highest Court in England before the enactment of O. 53 of the English Rules of the Supreme Court. Consequently, his Lordship was of the view that the rule of *locus standi* as stated by Buckley J in *Boyce v. Paddington Borough Council* [1903] 1 Ch. 109 and accepted by the House of Lords in *Gouriet v. Union of Post Office Workers and Ors.* [1978] AC 435 (HL) should be vigorously applied. His Lordship sounded a note of warning to the effect that the two important judgments on *locus standi* in Malaysia, namely, *Lim Cho Hock v. Government of the State of Perak & Ors.* [1980] 2 MLJ 148 and *Tan Sri Haji Othman Saat v. Mohamed bin Ismail & Ors.* [1982] 2 MLJ 177, represented the high water marks of the law of *locus standi* in Malaysia beyond which the Courts have been warned to be careful to tread. Moreover his Lordship sought to justify the rejection of these cases as the plaintiffs in these cases “had a genuine private interest to be furthered and protected.”

Abdul Hamid CJ (Malaya) (who later rose to be the Lord President) in *Government of Malaysia v. Lim Kit Siang (supra)* described *locus standi* in these words:

‘*Locus standi*’ is generally understood to mean the right of a party to appear and be heard by a tribunal. A litigant is said to have *locus standi*, in effect standing to sue in a Court of law, if that Court recognizes his or her ability to institute and maintain proceedings before it. The question of standing is thus separate and distinct from questions of the substantive merits and the legal capacity of the plaintiff. It follows, therefore, that a litigant may lack standing to bring a case which would succeed if brought by the right litigant.

Put in a nutshell, the law of standing to sue has two fundamental rules. First, apart from certain cases in which standing to sue is in the discretion of the Court, the plaintiff must possess an interest in the issues raised in the proceedings. Second, where the private plaintiff relies on an interest in the enforcement of a public right and not a private right, standing will be denied unless the Attorney-General consents to a relator action, or the plaintiff can demonstrate some special interest beyond that possessed by the public generally.

- a* Seah SCJ (as he then was) in his dissenting judgment in *Government of Malaysia v. Lim Kit Siang* (*supra*) explained “*locus standi*” in these words:

The Latin phrase ‘*locus standi*’ as used by the Courts in England, or ‘standing in Courts’ as the term is commonly understood by the lawyers in the United States of America, seems to indicate that a person is allowed by the Judges to appear and be heard in a legal proceeding. It is a procedural barrier erected by the Judges to prevent the Court’s time and public money from being wasted by multiplicity of frivolous and vexatious litigations brought by busybodies whose actions are bound to fail *in limine* and also to prevent abuse of the legal process.

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- c* I shall now revert to the case of *Boyce v. Paddington Borough Council* (*supra*) which was referred to by both Salleh Abas LP (as he then was) and Abdul Hamid CJ (Malaya) (who later rose to be the Lord President) in *Government of Malaysia v. Lim Kit Siang* (*supra*). The facts in *Boyce*’s case may be briefly stated as follows. The plaintiff there erected buildings on land abutting on the churchyard, with windows overlooking it. The local authority (having control over the churchyard as an open space) thereupon resolved to erect a hoarding in it to obstruct the access of light to the plaintiff’s windows with a view to preventing him from gaining a prescriptive right to the access of light over the churchyard, and the plaintiff brought an action for an injunction to restrain them from doing so. It was, *inter alia*, held that
- d* as the plaintiff was suing either in respect of an alleged private right to the access of light, or in respect of an alleged interferences with a public right from which he personally sustained special damages, he could sue without joining the Attorney-General as a plaintiff. This was how Buckley J put it (at p. 114):
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- f* A plaintiff can sue without joining the Attorney-General in two cases: first, where the interference with the public right is such as that some private right of his is at the same time interfered with (e.g. where an obstruction is so placed in a highway that the owner of premises abutting upon the highway is specially affected by reason that the obstruction interferes with his private right to access from and to his premises to and from the highway); and, secondly, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damages peculiar to himself from the interference with the public right. The former proposition, I think, is to be deduced from *Lyon v. Fishmongers’ Co.* 1 App. Cas. 662, and *Fritz v. Hobson* [1880] 14 Ch. D. 542, and was one which I had to consider in *Chaplin & Co v. Westminster Corporation* [1901] 2 Ch. 329; while the latter is to be found in *Iveson v. Moore* 1 Ld. Raym. 486, *Hart v. Basset* [1681] 4 Vin. Abr. 519, *Benjamin v. Storr* [1874] LR 9 CP 400, and *Winterbottom v. Lord Derby* [1874] LR 9 CP 400. I think, therefore, that the action is well constituted, and I pass on to consider whether the plaintiff has the right which he claims.
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At this juncture, it is germane that certain passages in the judgments of the Law Lords in the *Gouriet's* case should be referred to. Thus, at p. 480, Lord Wilberforce said:

In contrast with these inconclusive passages I will cite one of many in which the contrary has been affirmed. In the *Stockport District Waterworks Co. v. Manchester Corporation* [1862] 9 Jur. NS. 266 Lord Westbury LC said at p. 267:

... those are a few of the reasons which might be assigned, showing how desirable it is not to allow any private individual to usurp the right of representing the public interest. The only arguments which I am disposed to accept from those which I have heard today, are arguments founded upon the public interest, and the general advantage of restraining an incorporated company within its proper sphere of action. But, in the present case, the transgression of those limits inflicts no private wrong upon these plaintiffs, and although the plaintiffs in common with the rest of the public, might be interested in the larger view of the question, yet the constitution of the country has wisely intrusted the privilege with a public officer, and has not allowed it to be usurped by a private individual.

That it is the exclusive right of the Attorney-General to represent the public interest - even where individuals might be interested in a larger view of the matter - is not technical, not procedural, not fictional. It is constitutional. I agree with Lord Westbury LC that it is also wise.

Viscount Dilhorne in the *Gouriet's* case at p. 494 said:

The conclusion to which I have come in the light of the many authorities to which we were referred is that it is the law, and long established law, that save and in so far as the Local Government Act 1972, s. 222, gives local authorities a limited power so to do, only the Attorney General can sue on behalf of the public for the purpose of preventing public wrongs and that a private individual cannot do so on behalf of the public though he may be able to do so if he will sustain injury as a result of a public wrong. In my opinion the cases establish that the Courts have no jurisdiction to entertain such claims by a private individual who has not suffered and will not suffer a damage.

Again in the *Gouriet's* case, Lord Diplock said at p. 501:

The only kinds of rights with which Courts of justice are concerned are legal rights; and a Court of civil jurisdiction is concerned with legal rights only when the aid of the Court is invoked by one party claiming a right against another party, to protect or enforce the right or to provide a remedy against that other party for infringement of it, or is invoked by either party to settle a dispute between them as to the existence or nature of the right claimed. So for the Court to have jurisdiction to declare any legal right it must be one which is claimed by one of the parties as enforceable against an adverse party to the litigation, either as a subsisting right or as one which may come into existence in the future conditionally on the happening of an event.

- a* Lord Edmund-Davies delivering a separate judgment in the *Gouriet's* case said at p. 508:

My Lords, it has long been established that no citizen can of his own initiative sue in our Courts on his own behalf save to assert and protect his private rights, or to repel a right asserted against him by another. No advantage would be served by referring to more than a small fraction of the many cases cited to your Lordships which demonstrate that such is the law, and most of them will be found usefully discussed in S.A. de Smith, *Judicial Review of Administrative Action*, 3rd Edn. (1973) p. 400 *et seq.*

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- c* Finally, Lord Fraser of Tullybelton in his judgment in the *Gouriet's* case applied *Boyce's* case when his Lordship said at p. 518:

The general rule is that a private person is only entitled to sue in respect of interference with a public right if either there is also interference with a private right of his or the interference with the public right will inflict special damage on him.

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- e* Basically, *Gouriet's* case revolved on the issue of whether an individual was entitled to proceed in a claim for declaratory relief and interim injunction without asserting special interest or damage. It seems to me from the tenor of the judgments of the Law Lords in the *Gouriet's* case that to acquire *locus standi* there must be a stringent requirement that there ought to be an infringement of a private right or the suffering of special damage (see also *Abdul Razak Ahmad v. Majlis Bandaraya Johor Bahru* [1995] 2 MLJ 287). Consequently, the House of Lords in the *Gouriet's* case refused to grant *Gouriet* a declaration that it would be unlawful for the union to seek to interrupt mail between England and South Africa on the ground that *Gouriet* lacked *locus standi*.

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- g* On these authorities, I have to consider the crucial question of whether the plaintiffs had *locus standi* to proceed against the defendants. Lee Buck Heng affirmed an affidavit-in-reply on 2 December 1994 in Encl. 9 and there he replied to Encl. 5 and categorically stated that the plaintiffs had the necessary *locus standi* by referring to the writ of summons endorsed with the statement of claim. It is interesting to note that the statement of claim adverted to an agreement and irrevocable power of attorney made on 22 October 1951 between Ramaratnam Naidu daughter of K.G. Naidu of the one part and Muthupalaniappa Chettiar son of Sithambaram Chettiar of the other part
- h* **wherein Ramaratnam Naidu sold to Muthupalaniappa Chettiar** in consideration of RM14,000 a portion of land measuring 5,760 square feet together with shophouses known as numbers 441, 443, 445 and 447, Jalan Alsagoff, Pontian erected thereon forming part of all that pieces of land in the township of Pontian Kecil, district of Pontian, Johor **held under surat sementara No: 32 of 1925 and appointed Muthupalaniappa Chettiar her**
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lawful attorney with power and authority, *inter alia*, to give, sell, assign, and transfer the 5,760 square feet of land together with the said shophouses to any subsequent purchaser or transferee and to appoint any substitute in place of Muthupalaniappa Chettiar with all or any of the powers conferred on Muthupalaniappa Chettiar under the agreement and irrevocable power of attorney dated 22 October 1951. The statement of claim too made reference to an agreement and irrevocable power of attorney made on 29 March 1956 between Muthupalaniappa Chettiar of the one part and Ang Toon Chew, deceased, of the other part **wherein Muthupalaniappa Chettiar sold to Ang Toon Chew, deceased**, in consideration of the sum of RM14,000 the 5,760 square feet of land together with the said shophouses **held under surat sementara No: 32 of 1925 and appointed Ang Toon Chew his lawful attorney** with all the powers and authority conferred on Muthulapaniappa Chettiar by Ramaratnam Naidu under an agreement and irrevocable power of attorney dated 22 October 1951. It was stated further in the statement of claim that sometime in 1982 by an oral agreement made between Ang Toon Chew, deceased, and Ang Guan Seng, a director of the plaintiff, **in consideration of the plaintiff paying a proportionate share of the annual quit rent in respect of the land held under surat sementara No: 32 of 1925 and the annual assessment for the said shophouses**, Ang Toon Chew, deceased, assigned 5,760 square feet of land and transferred the said shophouses to the plaintiff. It was stated that Ang Toon Chew, deceased, died on 15 July 1991. The statement of claim further adverted that two titles of the 5,760 square feet of land had since been issued, namely, Grant 28716 which comprised of an area of 3,021 square feet and H.S.(D) 1971 which comprised of an area of 27,045 square feet in the name of Mohd. Taib bin Yusoff, deceased. It was said that shophouses numbers 445 and 447, Jalan Alsagoff, Pontian were wholly erected on Grant 28716 while shophouses numbers 441 and 443, Jalan Alsagoff, Pontian were erected partly on H.S.(D) 1971.

Now, perusing through the statement of claim the plaintiffs relied on the factual situations of the agreement and irrevocable power of attorney dated 22 October 1951 together with the agreement and irrevocable power of attorney dated 29 March 1956 to ground their claims that they had *locus standi*. But these two documents had nothing to do with Mohamed Taib bin Yusoff, deceased, as the latter was not a party to it. The issue documents of titles to Grant 28716 and H.S.(D) 1971 as exhibited in the affidavit-in-reply of Fadzilah bte Haji Omar affirmed on 24 January 1995 in Encl. 12 clearly did not carry the legend of surat sementara No: 32 of 1925 and, consequently, they were not connected with one another. Moreover under the “Peraturan Tanah Kerajaan Johor” particularly r. 7 which was worded in this manner: “Tiada boleh pindahkan atau dijual atau digadaikan surat ini melainkan dengan kebenaran Pemungut Hasil Tanah” would bar transaction in regard to the surat sementara

a No: 32 of 1925. It is pertinent to emphasise the fact that the surat sementara No: 32 of 1925 by its very word shows that it was a temporary occupation licence ('TOL'). Under ss. 67 and 68 of the National Land Code 1965 ('NLC') only the State Authority can approve TOLs. This brings me to the second issue.

b ***The Second Issue***

A TOL is, under the law, granted for a period of a year, at the end of which it expires. A TOL can only be used for the purpose for which it was granted; it may be renewed yearly; it will terminate on the death of the person to whom it was granted (*Papoo v. Veeriah* [1965] 1 MLJ 127). It must not be forgotten that a TOL may be cancelled at any time. As a general rule, a TOL may not be assigned or transferred to any person and this is clearly seen in s. 68 of the NLC which enacts that:

d Except so far as it is otherwise prescribed, a temporary occupation licence shall not be capable of assignment ...

Salleh Abas CJ (Malaya) (as he then was) had occasion to consider the effect of s. 68 of the NLC in the case of *Paruvathy v. Krishnan* [1983] 2 MLJ 121 and this was what his Lordship said while speaking for the then Federal Court:

e It is obvious from this section (referring to s. 68 of the NLC) that a TOL, being a licence only confers a personal right to the licence holder. This right comes to an end when the holder in the case of a natural person dies or in the case of a company or a firm or other bodies is dissolved. Being a personal right, the legal relationship thereby created is only between the licensor and the licensee. The licence is therefore non-transferable or incapable of assignment at the option of the licensee. It is not a right in rem which its holder can deal with as he or it pleases to the detriment of the issuing authority. Thus an assignment or arrangement purporting to transfer or assign the whole or any part of the licensed land will be of no effect and such assignment or arrangement will be illegal under s. 24 of the Contracts Act (see *Hee Cheng v. Krishnan* [1955] MLJ 103, and *Murugesan v. Krishnasamy & Anor* [1958] MLJ 92).

h The surat sementara No: 32 of 1925 being in the nature of a TOL, its validity was only for a year. If it was true that on 22 October 1951 Ramaratnam Naidu sold 5,760 square feet of land together with shophouses numbers 441, 443, 445 and 447 held under surat sementara No: 32 of 1925 to Muthupalaniappa Chettiar that sale was bad in law and of no effect since it was tainted with illegality (see s. 24 of the Contracts Act 1950 and *Paruvathy's* case). The subsequent sale by Muthupalaniappa Chettiar to Ang Toon Chew on 29 March 1956 of the same subject matter was equally infected with illegality. No doubt the parties employed the words "an agreement and

irrevocable power of attorney” in regard to those transactions but they were nothing more than a sale of the TOL land. In my judgment, it was a sale of the TOL land disguised as an agreement and irrevocable power of attorney. The purported assignment by way of an oral agreement in 1982 between Ang Toon Chew, deceased, and Ang Guan Seng, a director of the plaintiff of the same subject matter was equally bad in law and of no effect as it was infected with illegality. This was my judgment and I so hold accordingly.

The issuing authority of the TOL land has the final say in matters of TOL lands. No holder of a TOL land can usurp the issuing authority’s power. A TOL merely confers on the holder an exclusive possessory right to the land and the things thereon but not ownership thereof (*Mohamed v. Kunji Mohidin* [1967] 1 MLJ 96 (FC)). If it was true that Ramaratnam Naidu was the holder of the TOL land on 22 October 1951, she had a personal right as a holder of that TOL land but she could not, under the law, enter into any transaction which amounted to a transfer or an assignment of her right under the licence to Muthupalaniappa Chettiar. Since Ramaratnam Naidu did what the law forbade, the purported sale to Muthupalaniappa Chettiar was null and void (*Hee Cheng v. Krishnan* [1955] MLJ 103 and *Govindaraju v. Krishnan* [1962] MLJ 334). If it was true that Ramaratnam Naidu held a TOL of that land on 22 October 1951 she cannot confer in favour of a third party like Muthupalaniappa Chettiar in respect of the State land any right which she, in the first place, as a holder of the TOL did not possess in law or in equity (*Cheo Lean How v. Fock Fong Looi* [1985] 2 MLJ 440).

It was not disputed that Grant 28716 and H.S.(D) 1971 were registered in the name of Abdul Rahman bin Taib “sebagai wakil”. It was deposed in Encl. 11 that the plaintiffs paid the quit rents in respect of the four shophouses held under Grant 28716 and H.S.(D) 1971 and the relevant quit rents were exhibited and marked as “AGS 2”. Othman bin Mohamed Taib affirmed an affidavit on 26 June 1995 as reflected in Encl. 25 and there he deposed that his late father by the name of Mohd. Taib bin Yusoff did not sell Grant 28716 and H.S.(D) 1971 to anyone and that when he proceeded to the land office in 1988 to pay the quit rents he discovered that it was already paid. The payments of those quit rents were said to be ineffectual to give the plaintiffs entitlement to Grant 28716 and H.S.(D) 1971. I did say in *Punca Klasik Sdn Bhd (No: 2)* [1996] 5 MLJ 92 especially at p. 115 “... that payments of quit rents, assessment rates, electricity and water bills cannot be used as barometers to gauge ownership of lands without cogent supportive evidences in that direction. It is the Court that will decide the question as to the ownership of the land.” In regard to the issue of indefeasibility of title, the plaintiffs did not seek to challenge it. Enclosures 4 and 11 were totally silent as to whether the exceptions to indefeasibility would apply as against the

- a* defendants or for that matter as against Abdul Rahman bin Taib. Indefeasibility is linked up with registration. The party in whose favour the registration has been effected will, in law, obtain an indefeasible title to or an interest in the land (s. 340(1) of the NLC). Thus, the effect of registration is to defeat all prior unregistered claims. But indefeasibility is not absolute because under
- b* certain circumstances a registered title or interest may be set aside or defeated by one with a better claim. The Federal Court in *Teh Bee v. K. Maruthamuthu* [1977] 2 MLJ 7 laid down the principle that in the absence of any of the vitiating factors as set out in s. 340 of the NLC, a title, once registered, is indefeasible.
- c* There is a passage in the judgment of Peh Swee Chin J (now FCJ) in *Bank Bumiputra Malaysia Bhd. v. Mahmud bin Haji Mohamed Din (Datin Hajjah Salma bte Md. Jamin, Intervener)* [1989] 1 MLJ 381 that merits reproduction. It is this:
- d* When the exceptions in the said s. 340 do not apply as they did not apply to the instant case, the supervening title would defeat a prior equitable right or interest: *Ong Chat Pang v. Valliappa Chettiar* [1971] 1 MLJ 224. The chargee, to quote a familiar expression, had therefore succeeded in the scramble to get on the register and had therefore emerged victorious.
- e* On the facts, the exceptions to s. 340 of the NLC do not apply to the present case. The plaintiffs were contented not to challenge the indefeasibility of title accorded to Abdul Rahman bin Taib. Indefeasibility can only be successfully attacked on evidence but alas no evidence was led in that direction (*Dato' Hj. Nik Mahmud bin Daud v. Bank Islam Malaysia Bhd.* [1996] 4 MLJ 295 at p. 307). Gopal Sri Ram JCA in interpreting s. 340(4)(b) of the NLC
- f* in *Krisnadas a/l Achutan Nair & Ors. v. Maniyam a/l Samykano* [1997] 1 MLJ 94 said, and which should rightly apply to the present case in interpreting s. 340 of the NLC, in erudite terms:
- g* The function of a Court when construing an Act of Parliament is to interpret the statute in order to ascertain legislative intent primarily by reference to the words appearing in the particular enactment. *Prima facie*, every word appearing in an Act must bear some meaning. For Parliament does not legislate in vain by the use of meaningless words and phrases.
- h* In my judgment, even if the surat sementara No: 32 of 1925 could be traced to Grant 28716 and H.S.(D) 1971 as alleged by the plaintiffs (there was no evidence to this effect) it would not help the plaintiffs at all. In the mad rush to get onto the register Mohd. Taib bin Yusoff, deceased, left the plaintiffs miles behind. Mohd. Taib bin Yusoff, deceased, managed to successfully put his name boldly on the register and, in law, he was the winner. For these
- i* reasons, I dismissed Encl. 32 with costs.

Reported by Anne Khoo